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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,678

09/21/2006

Jerome Berger

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EXAMINER

RICCI, CRAIG D

ART UNIT

PAPER NUMBER

1628

MAIL DATE

DELIVERY MODE

11/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/593,678	Applicant(s) BERGER ET AL.	
	Examiner CRAIG RICCI	Art Unit 1628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/CRAIG RICCI/
 Examiner, Art Unit 1628

/Brandon J Fetterolf/
 Primary Examiner, Art Unit 1642

Continuation of 3. NOTE: The claims are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that Domard et al does not teach homogenously reacylated chitosan (Applicant Argument, Pages 9-11). Since it is not clear whether or not Domard et al specifically teaches homogenously reacylated chitosan, Applicants' argument as to this point is considered persuasive. However, as discussed in the previous Action, it would have been prima facie obvious to homogenously reacylate chitosan taught by Domard et al in view of Baumann et al. Applicants, however, argue that "Baumann does not teach a homogenously reacylated chitosan having a molecular weight of not smaller than 200 kDa and a deacetylation degree of 30-60% obtained from the reacylation of chitosan having a deacetylation degree of 80-90%" (Applicant Argument). However, Applicants are reminded that one can not show nonobviousness by attacking references individually where the rejections are based on combinations of references. In the previous Action, Baumann et al was used in combination with Domard et al to motivate the homogenous reacylation of chitosan. Applicants' argument that Baumann et al do not provide guidance for achieving homogenous reacylation is not considered persuasive since it is asserted that one of ordinary skill in the art would know how to carry out said homogenous reacylation absent guidance. Applicants also argue that Baumann et al teach other techniques or concepts to apply or consider when working with chitosan and it is improper to cite the reference for one of these. Applicants' argument is not found persuasive. Simply because a reference discloses multiple techniques or concepts would not limit one of ordinary skill in the art from using one of those techniques or concepts without applying all of said techniques and concepts. No where does Baumann et al indicate the set of guidelines is an "all or none" list as characterized by Applicants and one of ordinary skill in the art would not reasonably construe the disclosure of Baumann et al as such. Applicants again argue that Baumann et al teaches away from the recited chitosan. Although Baumann et al may indicate some advantages for low molecular weight chitosan over high molecular weight chitosan, Baumann et al do not criticize, discredit or otherwise discourage the recited high molecular weight chitosan. As such, Applicants' arguments are not found persuasive. As to Applicants' assertion that the prior art does not teach chitosan of more than 200 kDa, Applicants' arguments absent evidence are not considered persuasive. Applicants are advised to provide evidentiary support for the assertion that chitosan from the squid endoskeleton is less than 200 kDa. Furthermore, as previously discussed, it would have been obvious to use high molecular weight chitosan in view of Nettles et al. As to Nettles et al, Applicants are again reminded that one can not show nonobviousness by attacking references individually where the rejections are based on combinations of references. Applicants further argue that the use limitation of claims 10 and 22 result in structural differences between the claimed invention and prior art. However, this is not found persuasive. Applicants have merely claimed "homogenously reacylated chitosan having a molecular weight of not smaller than 200 kDa and a deacetylation degree of 30-60%". As previously discussed, Domard teaches reacylated chitosan having a deacetylation degree of 30-60%. Furthermore, in view of Baumann et al and Nettles et al, it would have been obvious to use homogenous reacylation and high molecular weight chitosan (i.e., not smaller than 200 kDa). Applicants' additional arguments limited to the process within the product-by-process claims are not considered relevant since said process carries no patentable weight.